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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF GENERAL COUNSEL
WASHINGTON, DC 20511

September 17, 2019

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20515

Dear Chairman Schiff,

I write in response to your September 13, 2019, letter and the subpoena from the House Permanent Select Committee on Intelligence (“HPSCI”), which was issued to the Acting Director of National Intelligence (“DNI”) last Friday evening. As you know, before you sent that letter, I had written to you, as well as to the other leaders of the Intelligence Committees, to explain how the DNI had handled a recent complaint received from the Inspector General of the Intelligence Community (“ICIG”). That letter explained how the DNI’s handling of the complaint complied with all applicable legal provisions.

The DNI has given nearly four decades of service to protecting the national security of our country. He is committed wholeheartedly to the mission of the Office of the Director of National Intelligence (“ODNI”), and he has deep respect for the relationship between ODNI and the Intelligence Committees. He looks forward to working constructively with you on this matter, as well as on the many pressing national security matters that our country faces, both this week, and on an ongoing basis.

The Intelligence Community and the Intelligence Committees have a long history of working cooperatively to support congressional oversight interests. We are disappointed, however, that rather than following our established practice of working together, HPSCI immediately served a subpoena for documents and demanded the Acting Director’s immediate testimony. That subpoena demanded production of sensitive and potentially privileged materials within fewer than two business days after service.

At the outset then, we believe that it is important to correct the record:

- ODNI has complied fully with all applicable law. We reiterate the full explanation provided in our September 13 letter, which I attach here.

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- The DNI believes strongly in the role of the ICIG and in the statutory provisions that encourage Federal employees and government contractors to report in good faith allegations of wrongdoing, in accordance with specific legal process. The DNI also takes seriously his obligation to protect whistleblowers from retaliation and pledges to continue to do so. The complainant here raised a matter with the ICIG. The ICIG has protected the complainant's identity from others within ODNI, and we will not permit the complainant to be subject to any retaliation or adverse consequence based upon his or her communicating the complaint to the ICIG.
- That said, the complaint forwarded to the ICIG does not meet the definition of "urgent concern" under 50 U.S.C. § 3033(k)(5). That definition concerns serious allegations relating to "the funding, administration or operation of an intelligence activity within the responsibility and authority" of the DNI. This complaint, however, concerned conduct by someone outside the Intelligence Community and did not relate to any "intelligence activity" under the DNI's supervision. Because the complaint was determined not to be an "urgent concern," the law did not require that the DNI forward the complaint to the Intelligence Committees.
- ODNI fully consulted with the ICIG during this process, and the DNI took no steps to prevent the ICIG from informing the Intelligence Committees of the existence of the complaint and the DNI's legal conclusion on this matter.

Notwithstanding that conclusion, as we explained last week, ODNI remains committed to working with the Committee to reach an acceptable accommodation, consistent with the established confidentiality interests of the Executive Branch. The complaint here involves confidential and potentially privileged matters relating to the interests of other stakeholders within the Executive Branch. Any decision by the DNI concerning potential accommodations of the Committee's requests will necessarily require appropriate consultations. While we are seeking to expedite consideration of the Committee's request, it will simply not be possible for the DNI to complete those consultations by this afternoon, which is less than two business days after we received the subpoena.

We also believe that it would be premature, at this juncture, for the Committee to expect for the DNI to appear on Thursday at a congressional hearing. Given the pressing responsibilities to which the DNI is devoted this week, he is not available on such short notice. We also believe that a hearing would not be a productive exercise while the ODNI remains engaged in deliberations over the appropriate response. We hope to quickly complete consultations to determine whether and to what extent we may be able to accommodate the Committee's request.

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We appreciate HPSCI's interest and support in this matter, and expect to provide a further response to the subpoena as soon as possible.

Respectfully,



Jason Klitenic
General Counsel

cc: Devin Nunes, Ranking Member

Attachment

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